IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

CRP.No. 2012 of 2001(M)

{R.C.A.NO.218/1998 OF THE RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE IN R.C.P.NO.53/1997 OF THE RENT CONTROL COURT, KOZHIKODE-I}
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REVN. PETITIONERS:
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1. A.M.PRABHAKARAN, S/O.A.M.VELAYUDHAN, ADHIKARI THARAMMAL, POST ARIYALLUR, MALAPPURAM DISTRICT.

2. A.V.SAVITHRI, D/O. DO. IN DO. DO.

3. A;M.SAROJINI, D/O. DO. IN DO. DO.

4. A.M.BALACHANDRAN, S/O.DO. IN DO.

5. A.M.SREEDEVI, D/O.DO. IN DO. DO.

6. A.M.SANTHA, D/O.DO. DO. IN DO. DO.

7. A.M.RADHA, D/O.DO. IN DO. DO.

BY ADV. SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.P.B.KRISHNAN

RESPONDENT:

CHITHAPPA SULAIKABI, D/O.AHAMMED KUNHI,
AND W/O.PULIKKAL SHAMSUDDEEN,
PUTHIYANGADI AMSOM DESOM,
KOZHIKODE TALUK AND DISTRICT.

BY ADV. SRI.A.P.CHANDRASEKHARAN (SR.)
SMT.PRABHA R.MENON
SRI.PUSHPARAJAN KODOTH
SRI.M.KRISHNAKUMAR

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON C.M.P.NO.4375/01 IN C.R.P.NO.2012/01

DISMISSED.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(ANTONY DOMINIC)
09.02.2007. JUDGE

sk/-

//true copy//

P.S. To Judge.

C.R.P.No.2012/01

Kurian Joseph, J.

Whether the expression 'tenant' as appearing under Section 11(17) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act') requires attribution of a contextual meaning different from the normal meaning as defined in Section 2(6) of the Act is the crucial issue. The Full Bench decision of this Court in **Narayanan v. Shalima** (2003(2) KLT 317) held that the protection conferred on a tenant under Section 11(17) of the Act against eviction on the ground of bona fide need of the landlord, is a personal privilege which lapses with the death of the original tenant. The said decision has been doubted by a Division Bench and hence this reference. I had the benefit of going through the illuminative judgment of my learned brother Padmanabhan Nair(J). I fully agree with the view of my learned brother that the Full Bench decision in **Narayanan's case** does not require reconsideration. However, I feel that a little more flavour could be added so as to sharpen the analysis.

2. At the outset, it is to be borne in mind that the Act provides for, permits and requires the definitions to be given

contextual meaning. The sub-section 2(6) dealing with 'tenant' is not to be truncated and read. It should be read from the opening words. The provision to the extent relevant reads as follows :-

> 2.Definitions:--In this Act, unless the context otherwise requires,--
>
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>
> -x x x x x x x x x xx x x-
>
> [(6) "tenant" means any person by whom or on whose account rent is payable for a building and includes:--
>
> (i) the heir or heirs of a deceased tenant, and
>
> (ii) a person continuing in possession after the termination of the tenancy in his favour, but does not include a Kudikidappukaran as defined in the Kerala Land Reforms Act, 1963 (Kerala Act 1 f 1964), or a person placed in occupation of a building by its tenant, or a person to whom the collection of rents or fees in a public market, cart-stand or slaughter house or of rents for shops has been farmed out or leased by a Municipal Council, Municipal Corporation, Township Committee or Panchayat;]

Section 11 dealing with eviction of tenants has prescribed the various safeguards against unreasonable eviction. Section 11(3), subject to the conditions therein permits eviction for the bona fide need of the landlord. It reads as follows :-

> 11.Eviction of tenants:--
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> -x x x x x x x x x x-
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> (3) A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building if he bona fide needs the building for his own occupation or for the occupation by any member of his family

dependent on him:

Provided that the Rent Control Court shall not give any such direction if the landlord has another building of his own in his possession in the same city, town or village except where the Rent Control Court is satisfied that for special reasons, in any particular case it will be just and proper to do so:

Provided further that the Rent Control Court shall not give any direction to a tenant to put the landlord in possession, if such tenant is depending for his livelihood mainly on the income derived from any trade or business carried on in such building and there is no other suitable building available in the locality for such person to carry on such trade or business:

Provided further that no landlord whose right to recover possession arises under an instrument of transfer inter vivos shall be entitled to apply to be put in possession until the expiry of one year from the date of the instrument:

Provided further that if a landlord after obtaining an order to be put in possession transfers his rights in respect of the building to another person, the transferee shall not be entitled to be put in possession unless he proves that he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him.

However, Section 11(17) further provides that a tenant, who has been in continuous occupation of a non-residential premises from 1.4.1940 cannot be evicted for the bona fide need of the landlord. The provision reads as follows :-

11.(17) Notwithstanding anything contained in this section a tenant who has been in continuous occupation of a building from 1st April 1940 as a tenant, shall not be liable to be evicted for bona fide occupation of the landlord or of the occupation by any member of his family dependent on him, provided that a landlord of a residential building shall be entitled to evict such a tenant of that building if the landlord has been living in a place outside the city, town or village in which the building is situated for a period of not less than five years before he makes an application to the Rent Control Court for being put in possession of the building, and requires the building bona fide

> for his own permanent residence or for the permanent residence of any member of his family or the landlord is in dire need of a place for residence and has none of his own.

Whether the tenancy referred to above in Section 11(17) would continue eternally through his heirs is the question.

3. The Rent Control Act no doubt is a social welfare legislation intended to protect and safeguard the interests of the tenants. It is "an Act to regulate the lease of buildings and to control the rent of the buildings in the State of Kerala." As held by the Supreme Court in **Ouseph Mathai** *v.* **M.Abdul Khadir** (AIR 2002 SC 110), the Act does not confer unfettered powers on the tenants to remain in possession of the leased premises for ever. In the statement of objects and reasons, the purpose of the Act as originally introduced in 1959 are; (1) regulation of the letting of buildings, (2) prevention of unreasonable eviction of tenants from buildings and (3) the control of rent in respect of the leased premises. While analysing the contextual meaning of a provision, the legislative intent is certainly a crucially relevant factor. The Act is not intended to make the tenant lord of the land, as was done in the case of the revolutionary legislation-the Kerala Land Reforms Act, or deprive ownership as in the case of Kerala Private Forests (Vesting and Assignment) Act. It is not

intended to give any fixity of tenure. It is intended only to prevent unreasonable eviction of the tenants. The Act is also not intended to give the tenant any vested right not to be ever evicted and to continue eternally in occupation. The intention is only to place some restrictions on the unfettered right of the landlord under the common law to evict his tenants at will. The Act does not contemplate any immunity to the tenants from eviction.

4. Section 11(3) of the Act permits the landlord to initiate proceedings for eviction on the ground of bona fide need, subject to the enumerated further restrictions as per the provisos under the sub-section. However, Section 11(17), despite the provisos, imposes a fetter for ever on eviction for bona fide use. In the instant case, we are concerned with the lease of a non-residential premises. Literally, Section 11(17) would mean that a tenant in continuous occupation of the premises from 1.4.1940 as a tenant, cannot be evicted for bona fide occupation of the landlord or of the occupation of any member of the family dependent on him. Since Section 11(3) provides for eviction on the ground of bona fide need, the fetter as introduced in Section 11(17) is thus an exception to Section 11(3). The simple question

is whether such exception to Section 11(3) as provided under Section 11(17) giving immunity from eviction is available to the heirs of a tenant who is in continuous occupation of the building from 1.4.1940. If the plain meaning of Section 2(6) is followed, the tenant has to mean the heirs also. But it has to be noted that Section 2 itself starts with the guarded provision-"unless the context otherwise requires". Whether the context of Section 11 (17) requires interpretation of the expression tenant to be restricted as a personal privilege on the particular tenant in continuous occupation from 1.4.1940 is the question.

5. Once a tenant, always a tenant and for ever, is not the concept sought to be introduced under the Act. The Act is intended only to prevent the mischief of unreasonable eviction meaning thereby that a tenant is liable to be evicted only in accordance with the provisions and procedure under the Act. If the literal meaning of the word 'tenant' as defined under Section 2(6) of the Act is taken, there is no question of any eviction of a tenant in occupation of non-residential premises as a tenant continuously from 1.4.1940 for the bona fide need of the landlord since there is no limit as such, on the succession of heirs of the tenant. An Act intended to give protection to a tenant from

unreasonable eviction cannot comprehend imposition of an unreasonable fetter for ever on a landlord from even thinking of eviction on the ground of bona fide need. That will be repugnant to the purpose of the Act. Restriction on the right to evict and not extinction of the right to evict is the purpose. Perpetuity of tenancy is not the intention of the legislature while enacting a law on regulation of the lease and prevention of unreasonable eviction. Regulation of the lease and not regularisation is the intention of the legislature. Protection from unreasonable eviction is the purpose and not eternal protection of the lease. The court has always a duty to strike a balance in such conflicting situations by attributing a just and fair meaning to the context. It is thus the duty of the court to find out the contextual meaning of the expression 'tenant' as appearing under Section 11(17) of the Act. Since Section 11(17) is an exception to Section 11(3) dealing with eviction on the ground of bona fide need of the landlord, deprivation of that right of the landlord has only to be limited to the particular person in continuous occupation of the tenanted non-residential premises as a tenant from 1..4..1940. It is a personal privilege granted to the particular tenant which cannot be inherited by the heirs. It is not intended to provide an

immunity to the heirs of the tenant in eternity from eviction, extinguishing the legitimate hopes of the landlord to have the premises for his bona fide need.

6. My wisdom, on the reasoning referred to above, is mainly gathered from the literature on Principles of Statutory Interpretation by Justice G.P.Singh (Eighth Edition) and also a few celebrated decisions. According to the learned author, "Reference to the Statement of Objects and Reasons is permissible for understanding the background, antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy". As already stated above, when the common law permitted the landlords to evict the tenants at their sweet will, the legislature thought of granting protection only from the unreasonable eviction, and not perpetuity of tenancy. Even without reference to the statement of objects and reasons also, courts may have to make such an attempt to gather the contextual meaning. To refer to one of the earliest decisions on this point, of the Privy Council and to quote Sir George Rankin (ILM Cadija Umma v. S.Don Manis Appu, AIR 1939 PC 63 p.65),

"A phrase having been introduced and then defined

> the definition *prima facie* must entirely determine the application of the phrase; but the definition must itself be interpreted before it is applied, and interpreted, in case of doubt in a sense appropriate to the phrase defined and to the general purpose of the enactment".

In a given situation where the definition of an expression itself is creating difficulty in giving effect to the purpose of legislation, the expression will have to be interpreted having regard to the purpose of the Act. In other words, a definition is not to be read in isolation. In the instant case, however, the definition clause itself provides that the expression should be understood and applied having regard to the context in which the expression 'tenant' appears. Under Section 11(17), the context relevant to the case is that of a tenant in continuous occupation of the non-residential premises from 1.4.1940 facing the threat of eviction on the ground of the most valuable right of the landlord, viz., bona fide own need. To such a valuable right only, a temporary check by way of exemption is given, a life interest, taking note of the occupation of a particular person as a tenant for a long time and a specified date is given as 1.4.1940. Despite my strenuous effort as to the relevance of that date, I confess, I was not able to gather any significance of that date, even from the debates in the Assembly. Be that as it may, it would only mean a long, un-

interrupted occupation of a non-residential premises by a person as a tenant. Though ordinarily a tenant is liable to be evicted for the bona fide need of the landlord, in the case of the particular person in continuous occupation of a premises as a tenant from 1.4.1940, an exception is provided, protection from eviction till the end of his life. That is only a personal privilege to the person and not to his heirs, lest it should lead to perpetuity of tenancy, which would be repugnant to the purpose of the legislation.

7. The contention of the revision petitioner is that the court should not usurp on the legislative function under the guise of interpretation. The Judges are not expected to interpret statutes in the light of their views on policy matters. What is expedient, what is just and what is morally justifiable etc. are for the legislature to decide. I have no quarrel with the well settled position. But that does not mean that Judges should not say what the law is having regard to the purpose for which the statute is enacted. That is not judicial legislation, it is judicial function. While it is to the legislature to decide what the law should be; it is for the Court to say what the law means. To quote Justice G.P.Singh,

"The Courts are warned that they are not entitled to

> usurp legislative function under the disguise of interpretation and that they must avoid the danger of an *apriori* determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somehow fitted. Caution is all the more necessary in dealing with the legislation enacted to give effect to policies that are subject of bitter public and parliamentary controversy for in controversial matters there is room for differences of opinion as to what is expedient, what is just and what is morally justifiable; it is the Parliament's opinion in these matters that is paramount. This only means that Judges cannot interpret statutes in the light of their views as to policy; but they can adopt a purposive interpretation if they can find in the statute read as a whole or in the material to which they are permitted by law to refer as aids to interpretation an expression of Parliament's purpose or policy. So there is no usurpation of function or danger when the purpose or object of a statute is derived from legitimate sources and the words are given an interpretation which they can reasonably bear to effectuate that purpose or object." (emphasis supplied)(Chapter I page 17)

A mechanical interpretation of the words without bearing in mind the object of the legislation will defeat the purpose of the legislation. In the words of Krishna Iyer, J., in **Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee** (AIR 1977 SC 965),

> "to be literal in meaning is to see the skin and miss the soul. The judicial key to construction is the composite perception of the deha and the dehi of the provision."

To quote Chinnappa Reddy, J. in **Reserve Bank of India v.**

Pearless General Finance and Investment Co. (AIR 1987 SC 1023), "Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted"(emphasis supplied). At the risk of redundancy, I may state that the statute was enacted only to suppress and prevent the mischief of unreasonble eviction and not to give permanency of tenancy. In the matter of intention of the legislature, according to Justice G.P.Singh, the words used by the legislature do not always bear plain meaning and even on the plain meaning itself, there could be doubts. That is precisely the situation in the instant case. In such situations of doubt, it is always safe to have an eye on the object and purpose of the statute, or the reason of spirit behind it.

> "The intention of the Legislature thus assimilates two aspects: In one aspect it carries the concept of 'meaning', i.e., what the words mean and in another aspect, it conveys the concept of 'purpose and object' or the 'reason and spirit' pervading through the statute. The process of construction, therefore, combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by

considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed."(Chapter I, page 10)

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"But words used by the Legislature do not always bear a plain meaning. Moreover, judges quite often differ on the issue whether certain words are plain and even when there is an agreement that the words are plain, difference of opinion may result on the question as to what the plain meaning is. In case of doubt, therefore, it is always safe to have an eye on the object and purpose of the statute, or reason and spirit behind it. "I say that we must look to what the purpose is", was said by LORD CAIRNS; and it was observed by SIR JOHN NICHOLL that "the key to the opening of every law is the reason and the spirit of the law". This aspect of 'purpose' is the very foundation of the rule in Heydon's case reported by LORD COKE as far back as 1584. Statutes "should be construed not as theorems of Euclid", said JUDGE LEARNED HAND, "but with some imagination of the purposes which lie behind them." "Each word, phrase or sentence" observed MUKHERJEA J. "is to be construed in the light of general purpose of the Act itself". In the words of K.Iyer, J. the interpretative effort "must be illumined by the goal though guided by the word". (Chapter I, Page 12)

8. It is not always safe to adopt the plain meaning of the words in a statute stating that it was the wisdom of the legislature. As the learned author says, some times, the legislature itself, if consulted would say that they did not even comprehend such a situation. To quote "In all real controversies

of construction if it were open to consult the Legislature as to its intention, the answer of most of the legislators in all probability will be: 'such a problem never occurred to us, solve it as best as you can, consistent with the words used, and the purpose indicated by us in the statute'".

9. Thus viewed from any angle, it is crystal clear that the special privilege granted to a person in continuous occupation of a non-residential premises as a tenant ever since 1.4.1940 is a personal privilege, not intended to be inherited by his heirs, since the context otherwise requires the expression to be read and interpreted so.

KURIAN JOSEPH, JUDGE.

KURIAN JOSEPH & A.K.BASHEER, JJ

W.P.(C) NO. OF 2004

J U D G M E N T

Dated 5th January, 2007.